IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17945 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS AND LEGAL REPRESENTATIVEOF LADHA AJA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17945 of 2003

MR MRUGEN K PUROHIT for Petitioner No. 1-1/5

MR PRAVIN GONDALIYA for Respondent No. 1

NOTICE SERVED for Respondent No. 1,2-4

MR HARIN P RAVAL for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 13/07/2004

ORAL JUDGEMENT

Rule. Shri Nagesh Sood, learned AGP waives service of Rule on behalf of respondents No. 1 to 4 and Shri Harin P. Raval, learned advocate waives service of Rule on behalf of respondent No.5. With the consent of

the parties and considering the facts and circumstances of the case, the matter is taken up for final hearing today.

2. At the outset, the learned advocate appearing on behalf of the petitioners does not press the prayer for quashing and setting aside the order passed by the Collector, Rajkot, dated 8.9.1998 at this stage as the matter is being remanded to the revisional authority. He is also not pressing for the relief and/or declaration that the respondent No.5 has no right, title or interest over the disputed property and the proceedings initiated by him is absolutely illegal and arbitrary and is beyond the period of limitation.

3. In this petition under Article 226/227 of the Constitution of India, the petitioners have challenged the judgment and order dated 20.9./28.10.2003 passed by the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, in Revision Application No. 11/98 in dismissing the same and confirming the order passed by the Collector, Rajkot dated 8.9.1998 in Appeal No. 41 of 1996 and also the abovestated order passed by the Collector, Rajkot.

4. Shri Mrugan Purohit, learned advocate appearing on behalf of the petitioners had submitted that the judgment and order passed by the learned Special Secretary (Appeals), Revenue Department is absolutely illegal and arbitrary and the same is passed without assigning any reasons which does not reflect the arguments advanced on behalf of the petitioners nor the authorities have been dealt with. He has submitted that in fact he had submitted written submissions before the learned Special Secretary, but none of the arguments which were mentioned in the written submissions as well as in the revision application has been dealt with and discussed by the learned Special Secretary and therefore requested to remand the matter to the learned Special Secretary for deciding and disposing of the revision application on merits and in accordance with law after considering the arguments and submissions made on behalf of the parties. Shri HP Raval, learned advocate appearing for the respondent No.5 has submitted that the learned Special Secretary has already considered the relevant papers produced before him and has dealt with the submissions and therefore the matter is not required to be remanded.

5. Considering the order passed by the learned

Special Secretary rejecting the revision application, this Court is of the opinion that while rejecting the revision application if the arguments advanced on behalf of the petitioners had been dealt with by him then the order passed by him would have reflected discussions about the same. The revisional authority is required to consider and deal with the arguments and the submissions made before him and it should be reflected in the order whether he has considered the arguments submitted on behalf of the parties or not. From the bare reading of the judgment and order passed by the revisional authority, ti does not show that the arguments and the submissions made on behalf of the petitioners are dealt with and considered by him. On that ground alone, the present Special Civil Application is required to be allowed and accordingly it is allowed. The matter is remanded to the learned Special Secretary for deciding the revision application afresh on merits and in accordance with law and pass a detailed speaking and reasoned order after considering all the arguments and submissions made on behalf of the parties. The learned Special Secretary is directed to decide and dispose of the revision application strictly on merits and in accordance with law without in any way influenced by the fact that the order dated 28.10.2003 passed by him in Revision Application No. 11/98 is quashed and set aside by this Court as the same is quashed and set aside only on the ground that the said order does not reflect the discussion about dealing of arguments or submissions made by the parties. It goes without saying that when the matter is remanded to the learned Special Secretary quashing and setting the order impugned in the petition, whatever interim relief granted and in force during the pendency of the revision application shall be automatically revived. The learned Special Secretary (Appeals) is directed to decide and dispose of the revision application, on remand, within a period of six months from the date of receipt of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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